

RECORDATION NO. 27666-A FILED

OCT 21 '08 -5 12 PM

LAWYERS

SURFACE TRANSPORTATION BOARD



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October 21, 2008

**E-FILING RECORDATION**

Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

Re: Memorandum of Partial Assignment of Lease Agreement ~ Secondary Document to  
Recordation No. 27666

Dear Ms. Quinlan:

Enclosed for recordation pursuant to 49 U.S.C. § 11301, is a Memorandum of Partial Assignment of Lease Agreement, dated as of October 17, 2008, a secondary document as defined in the Board's Rules for the Recordation of Documents. The primary document to which this is connected is recorded under Recordation No. 27666. The enclosed document relates to a Memorandum of Lease Agreement filed September 30, 2008, under Recordation No. 27666 between National City Commercial Capital Company, LLC, as Lessor, and Dakota, Minnesota & Eastern Railroad Corporation, as Lessee.

We request that the document be recorded under Recordation No. 27666-A.

The enclosed Memorandum of Partial Assignment of Lease Agreement is an assignment by National City Commercial Capital Company, LLC ("Assignor") to The Fifth Third Leasing Company ("Assignee") of Schedule No. 9, and the locomotives subject thereto.

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The names and addresses of the parties to the Memorandum of Partial Assignment of Lease Agreement are:

**Assignor:**

National City Commercial Capital Company LLC  
2720 Sugarloaf Club Drive  
Duluth, Georgia 30097

**Assignee:**

The Fifth Third Leasing Company  
MD 10904A  
38 Fountain Square Plaza  
Cincinnati, Ohio 45263

A description of the equipment covered by the Memorandum of Partial Assignment of Lease Agreement consists of:

“eleven (11) Model #SD40-2 locomotives with marks and numbers ICE6448 through ICE6454, inclusive, ICE6456 through ICE6459, inclusive; one (1) model SD40-3 locomotive with mark and number DME6055; and one (1) model GP38-3 locomotive with mark and number DME3835.”

together with all attachments, accessories, accessions and substitutions thereto.

A fee of \$41.00 is being remitted. Please return one of the originals to:

Richard J. Schroeder  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 1700  
Seattle, WA 98101-3045

A short summary of the document to appear in the index follows:

Memorandum of Partial Assignment of Lease Agreement between  
National City Commercial Capital Company, LLC, as Assignor,  
and The Fifth Third Leasing Company, as Assignee, covering:

“eleven (11) Model #SD40-2 locomotives with marks and numbers

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ICE6448 through ICE6454, inclusive, ICE6456 through ICE6459, inclusive; one (1) model SD40-3 locomotive with mark and number DME6055; and one (1) model GP38-3 locomotive with mark and number DME3835."

The document does not contain a hereafter acquired clause.

Very truly yours,

Davis Wright Tremaine LLP



Richard J. Schroeder

Enclosures

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SURFACE TRANSPORTATION BOARD

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MEMORANDUM OF PARTIAL ASSIGNMENT OF LEASE AGREEMENT

(SCHEDULE NO. 9)

between

NATIONAL CITY COMMERCIAL CAPITAL COMPANY, LLC,  
("ASSIGNOR")

and

THE FIFTH THIRD LEASING COMPANY,  
("ASSIGNEE")

OCTOBER 17, 2008

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Filed with the Surface Transportation Board pursuant to  
49 U.S.C. § 11301 on \_\_\_\_\_, \_\_\_\_\_, 2008, at \_\_\_\_\_ a.m./p.m.  
Recordation Number \_\_\_\_\_

## **MEMORANDUM OF PARTIAL ASSIGNMENT OF LEASE AGREEMENT**

**THIS MEMORANDUM OF PARTIAL ASSIGNMENT OF LEASE AGREEMENT** is made and entered into as of October 17, 2008, by and between **NATIONAL CITY COMMERCIAL CAPITAL COMPANY, LLC** ("Assignor") and **THE FIFTH THIRD LEASING COMPANY** ("Assignee").

1. Assignor as lessor and Dakota, Minnesota & Eastern Railroad Corporation, as lessee ("Lessee") have heretofore entered into that certain Memorandum of Lease Agreement dated as of September 30, 2008 (the "Memorandum of Lease Agreement") pertaining to the locomotives described therein (the "Locomotives") leased pursuant to that certain Railcar Lease Agreement dated as of December 22, 2004 ("Master Lease"), and Schedule No. 9 thereto dated September 30, 2008 ("Schedule No. 9").

2. The Memorandum of Lease Agreement was filed and recorded as Recordation No. 27666 with the Surface Transportation Board pursuant to 49 U.S.C. § 11301 and 49 CFR 1177 on September 30, 2008, at 4:00 p.m.

3. Assignor has assigned to Assignee all right, title and interest of Assignor in and to Schedule No. 9 and the thirteen (13) Locomotives identified on Exhibit No. 3 to the Memorandum of Lease Agreement (the Assigned Locomotives, as defined below).

4. Assignor and Assignee desire to confirm of record the assignment to Assignee of the rights of Assignor in and to the Assigned Locomotives and Schedule No. 9.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby confirm and agree that Assignor has assigned to Assignee all right, title and interest of Assignor in, to and under Schedule No. 9 and the eleven (11) Model #SD40-2 locomotives with marks and numbers ICE6448 through ICE6454, inclusive, ICE6456 through ICE6459, inclusive, and one (1) model SD40-3 locomotive with mark and number DME6055, and one (1) model GP38-3 locomotive with mark and number DME3835 (collectively, "Assigned Locomotives"), leased thereunder, and Assignee has accepted such assignment.

This Memorandum of Partial Assignment of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but altogether only one Memorandum of Partial Assignment of Lease Agreement.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Partial Assignment of Lease Agreement to be executed as of the date first above written.

ASSIGNOR:

NATIONAL CITY COMMERCIAL CAPITAL  
COMPANY, LLC

By: [Signature]  
Name: Jon B. Lipstreuer  
Title: Vice President

STATE OF OHIO

)  
) ss.  
)

COUNTY OF CUYAHOGA

On this 17<sup>th</sup> day of October, 2008, before me appeared Jon B. Lipstreuer, the person who signed this instrument, who acknowledged that (s)he is the Vice President of NATIONAL CITY COMMERCIAL CAPITAL COMPANY, LLC and that, being duly authorized, (s)he signed such instrument as a free act on behalf of said company.

[Signature]  
NOTARY PUBLIC for the State of Ohio Residing at  
Therese M. Woodman, Notary Public  
My Commission Expires: State of Ohio - Cuyahoga County  
My commission expires April 5, 2009

[Assignor signature page]

[Schedule No. 9/STB]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Partial Assignment of Lease Agreement to be executed as of the date first above written.

ASSIGNEE:

THE FIFTH THIRD LEASING COMPANY

By: *Scott D. Kiley*  
Name: **SCOTT D. KILEY**  
Title: **Vice President**

STATE OF OHIO                    )  
  ) ss.  
COUNTY OF HAMILTON        )

On this 16<sup>th</sup> day of October, 2008, before me appeared Scott D. Kiley, the person who signed this instrument, who acknowledged that (s)he is the VP of THE FIFTH THIRD LEASING COMPANY, and that, being duly authorized, (s)he signed such instrument as a free act on behalf of said corporation.

*Elaine Ellis*  
NOTARY PUBLIC for the State of  
Ohio Residing at Hamilton County

My Commission Expires: ELAINE ELLIS  
Notary Public, State of Ohio  
My Commission Expires Sept. 14, 2012



[Assignee signature page]

[Schedule No. 9/STB]